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Docket No.: 60726-A/JPW/GJG/CSN

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Moses Rodriguez and Daren Ure

Serial No.: 09/885,227

Filed : June 20, 2001

For : TREATMENT OF CENTRAL NERVOUS SYSTEM DISEASES BY  
ANTIBODIES AGAINST GLATIRAMER ACETATE

1185 Avenue of the Americas  
New York, New York 10036  
April 8, 2002

Honorable Commissioner For Patents  
Washington, D.C. 20231

RECEIVED

APR 24 2002

Attn: Office of Petitions

OFFICE OF PETITIONS

SIR:

PETITION TO THE COMMISSIONER UNDER 37 C.F.R. § 1.47(b)

Teva Pharmaceutical Industries, Ltd. is the owner or otherwise has a sufficient proprietary interest in the above-identified application by virtue of a written agreement, a copy of which is attached hereto as **Exhibit 1**, justifying this action, hereby submits this Petition to the Commissioner under 37 C.F.R. § 1.47(b). The fee for filing this petition is one hundred and thirty dollars (\$130.00) and a check in this amount is enclosed.

This Petition is being filed concurrently with a Communication in Response to Notice to File Missing Parts of Application. That Communication includes an original Declaration and Power of Attorney signed by Yenudah Livneh and Uzi Karniel, authorized officials of Teva Pharmaceutical Industries, Ltd., which is the owner or otherwise has a sufficient proprietary interest in the subject application justifying this action, on behalf of and as

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agents for Moses Rodriguez and Daren Ure. A copy of the Declaration and Power of Attorney is attached hereto as **Exhibit 2**.

As required under 37 C.F.R. § 1.47(b), Teva Pharmaceutical Industries, Ltd. asserts that it is the owner or otherwise has a sufficient proprietary interest in the subject application justifying this action by virtue of a September 1, 1997 written Agreement between Teva Pharmaceutical Industries, Ltd., Mayo Foundation for Medical Education and Research and Moses Rodriguez, an inventor and the principal investigator. Clause 5 of the September 1, 1997 Agreement provides Teva Pharmaceutical Industries, Ltd. with the right to "...secure adequate intellectual property protection of any aspect or part of the proposed publication [of the results of the Project]..." Furthermore, clause 8 of the September 1, 1997 Agreement expressly grants Teva Pharmaceutical Industries, Ltd. "...the sole and exclusive right to use all of the results of the Project on a worldwide basis, in such manner as Teva, in its sole discretion, deems fit." Therefore, Teva Pharmaceutical Industries, Ltd. is the owner or otherwise has a sufficient proprietary interest in the subject application justifying this action.

On August 13, 2001, a meeting was held between representatives of Teva Pharmaceutical Industries, Ltd., the undersigned attorney and the in-house and the outside legal counsel for Mayo Foundation for Medical Education and Research, Moses Rodriguez and Daren Ure, in an effort to obtain the signatures of the inventors. After not receiving the signatures, on March 8, 2002, the undersigned attorney sent a letter to James A. Rogers III, Esq., in-house counsel for Mayo Foundation for Medical Education and Research, with copies to Moses Rodriguez and Daren Ure, once

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again requesting that the inventors sign the Declaration and Power of Attorney and enclosing the Declaration ad Power of Attorney to be signed. A copy of the March 8, 2002 letter and the Declaration and Power of Attorney enclosed therewith are attached hereto as **Exhibit 3**. Attached hereto as **Exhibit 4** are copies of the Federal Express "Shipped to Detail Report" and "Tracking Reports," confirming that the March 8, 2002 letter and its enclosures were received by D. Abel for James A. Rogers, III of the Mayo Foundation for Medical Education and Research, and copies were received by Drs. Moses Rodriguez and Daren Ure. James A. Rogers III, Esq. referred the March 8, 2002 letter and its enclosures to outside counsel, Michael E. Florey, who responded in a March 15, 2002 letter that Mayo Foundation for Medical Education and Research does not agree to have Moses Rodriguez and Daren Ure sign the Declaration and Power of Attorney. A copy of the March 15, 2002 letter is attached hereto as **Exhibit 5**.

In accordance with 37 C.F.R. § 1.47(b), Teva Pharmaceutical Industries, Ltd. asserts that this action is necessary to prevent irreparable damage. Under MPEP § 409.03(g), "Irreparable damage may be established by a showing (a statement) that a filing date is necessary to preserve the rights of the party or to prevent irreparable damage." The June 20, 2001 filing date is necessary to preserve the rights of Teva Pharmaceutical Industries, Ltd. to claim the benefit of the filing dates of U.S. Provisional Application No. 60/212,577, filed June 20, 2000, U.S. Provisional Application No. 60/269,788, filed February 16, 2001, and U.S. Provisional Application No. 60/287,171, filed April 27, 2001. This petition is necessary to preserve the right to claim the benefit of these filing dates. Were the subject application to become abandoned, the right to claim the benefit of the filing dates of the U.S. provisional applications would be irrevocably

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lost. Therefore, the filing date of the subject application is necessary to preserve the rights of the parties.

Additionally, the subject matter of the subject application was published on December 27, 2001 as International Application No. PCT/US01/19649. The International Application does not designate the United States, so Teva Pharmaceutical Industries, Ltd. cannot preserve its rights in the United States by entering the national phase.

In accordance with 37 C.F.R. § 1.47(b), Teva Pharmaceutical Industries, Ltd. notes that the last known addresses of all inventors are as follows:

Moses Rodriguez, 2402 Hillside Lane, S.W., Rochester, MN 55902; and

Daren Ure, 2315 22<sup>nd</sup> Street, N.W., Rochester, MN 55901.

Teva Pharmaceutical Industries, Ltd. respectfully submits that the filing of the Declaration and Power of Attorney signed by Yehudan Livneh and Uzi Karniel, authorized officials of Teva Pharmaceutical Industries, Ltd., which is the owner or otherwise has a sufficient proprietary interest in the subject application justifying this action, on behalf of and as agents for Moses Rodriguez and Daren Ure, is a proper response to the Notice of Missing Parts and is necessary to preserve the rights of Teva Pharmaceutical Industries in view of the inventors' refusal to sign the Declaration and Power of Attorney.

Applicants assert that the requirements of 37 C.F.R. §1.47(b) have been satisfied. The undersigned, on behalf of Teva Pharmaceutical Industries, Ltd., respectfully petitions the Commission under 37 C.F.R. §1.47(b) to permit Teva Pharmaceutical Industries, Ltd. to proceed with the prosecution of the subject

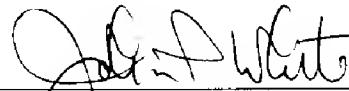
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application.

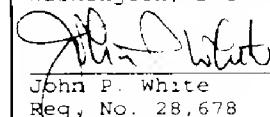
If a telephone interview would be of assistance in advancing prosecution of the subject application, the undersigned attorney invites the Examiner to telephone him at the number provided below.

No fee, other than the enclosed \$130.00 fee, is deemed necessary in connection with the filing of this petition. However, if any additional fee is deemed necessary, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.

Respectfully submitted,



John P. White  
Registration No. 28,678  
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| I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to: Honorable Commissioner for Patents Washington, D.C. 20231 |      |
|  4/8/02   | Date |
| John P. White<br>Reg. No. 28,678   |      |